

12 October 1983

MEMORANDUM FOR: Chief, Operations (PSI)  
FROM:   
Chief, Polygraph Division  
SUBJECT: Proposed Executive Orders

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1. The concept of two separate Executive Orders, one for federal employment by the government and one for access to classified information, is an interesting one and I have no objection, in principle, to that. However, in Section 2 of the Executive Order dealing with "Employment in the Federal Government" I am disturbed by the restriction on passing information from a records check, the so-called "National Agency Employment Check" (NAEC), where that information is not considered disqualifying. This limits the passing of derogatory information to the perhaps varying interpretations not only of the individual agencies but even of individuals within a given agency. Furthermore, I believe it is ridiculous to restrict the passing of disqualifying information in an NAEC inquiry to that information which is other than of a security nature because security information may very well be serious enough to warrant disqualification or vice versa. Another problem that I have is that I do not understand how any disqualifying information would get passed in most cases since even the non-disqualifying information cannot be passed unless the person has had an opportunity to confront the source of the information.

2. With respect to the Executive Order dealing with the "Protection of National Security Information" it appears to me to be particularly heavy-handed and clearly was written by, if I may use the phrase, a security type. It seems to give exclusive and final authority to security officials. I doubt that Agency management will favor this approach. The Section 2 is not at all subtle in deferring to the discretion of security officials in making a final determination. It seems to me that this will cause problems among many who review this proposed Executive Order.

3. In Section 3 of this latter order it is not clear that one can take into consideration a person's past activities. Note that it refers to consideration of people who "may have" vulnerabilities or may engage in any exploitable, personal conduct, etc. In passing, I note that the word indiscreet is misspelled on line 7 of that Section. The narrative style in listing the prerequisites for access to classified information

adds to the heavy-handed nature of this page. I think it would have been preferable to itemize the characteristics or list them in various groupings. Again, this Section refers to Executive Branch "security officials" and I think it would be preferable to simply refer to agencies rather than a particular group of people in those agencies. The list in Section 3, I believe, will raise the hackles of many and, indeed, we all should be concerned that the determination by an agency will be final and non-reviewable.

4. In Section 4 of this same order on "Protection of National Security Information", we may have some problems with the restriction on hiring a person who will be placed in a position requiring a security clearance or approval before said clearance or approval has been granted. This would totally pre-empt restitution of the pool concept. Perhaps this is desirable from a security standpoint but it seems to me that the agency could use some flexibility. This section, furthermore, appears to reflect a misinterpretation of the powers of the DCI in giving him the authority to approve or deny the provision of classified information to uncleared persons in the course of a counterintelligence operation. The writer seems to believe that the DCI has full authority in the counterintelligence area and limits the FBI to law enforcement situations. Clearly the FBI should have the authority domestically.

5. Section 5 is troublesome in that the CIA is expressly designated to conduct background investigations when CIA is involved, DIS when DOD information is involved and so on. The overt singling out of CIA is undesirable

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Anyone familiar with the Executive Order would be able to state that we have no authority, i.e., that a non-DIS/DOD investigator has no Executive Order authority. I very definitely do not like that a National Agency Security Check (NASC) would exclude information regarding the suitability of a person for federal employment where that information is not of explicit security significance.

6. Section 6 will probably give the DDO some problems in that they are in liaison with the FBI and would be precluded from obtaining any information of a security nature. Finally, in Section 6, it is not clear to me whether the "de novo" provision means that all information passed from one agency to another is for lead purposes only. Whether a security determination could be made on that basis is the issue. Other than the above, I couldn't find a thing wrong.

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